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SUMMARY RECORD OF THE 1347th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 July 1994, at 10 a.m.

Chairman: Mr. ANDO

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GE.94-17893 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Slovenia (CCPR/C/74/Add.1; HRI/CORE/1/Add.35) (continued)

1. The CHAIRMAN invited the delegation of Slovenia to reply to questions put by members of the Committee.

2. Mrs. ŠELIH (Slovenia) expressed her delegation's appreciation for the careful attention given to its report. She reiterated her belief that the discussions in the Committee would be most helpful in connection with the drafting of human rights legislation in her country and would be the subject of critical appraisal.

3. Mr. MAHNIČ (Slovenia), referring to a question concerning the constitutional and legal framework within which the Covenant was implemented, said that under article 8 of the Constitution, generally accepted principles of international law and international treaties to which Slovenia was a party (including the Covenant) could be regarded as part of internal law. Article 8 also provided for the direct application of ratified international treaties. There might be examples of provisions of international treaties that were too general or abstract to be applied directly or whose violation did not entail sanctions. In such cases, adoption of appropriate internal legislation would be necessary in order to implement an international treaty. However, subject to that limitation, the courts could use the provisions of the international treaties in force.

4. In practice, there had been instances of direct use of provisions of international treaties by the competent authorities. His delegation had been informed that in certain cases the Convention on the Rights of the Child had been used by the competent authorities in making a ruling concerning the acquisition of nationality by a child. That had been done because the Convention's provisions were more beneficial to a child than the internal legislation in force at that time.

5. There was no doubt that contradictions might arise between ratified international treaties and statutes or other internal regulations. Under the Foreign Relations Act, when such a contradiction was determined to exist, the international treaty applied until the matter was settled. The Constitutional Court of Slovenia was competent to make a decision on the harmonization of statutes with ratified international treaties. However, authorities could prevent problems from arising in the case of a contradiction between an international treaty and the Constitution, by making use of article 160 of the Constitution, which gave the Constitutional Court competence to make a determination on the harmonization of an international treaty with the Constitution during the process of its ratification.

6. The harmonization of all internal legislation with the Constitution had not yet been accomplished. When it had become obvious in 1993 that harmonization would require more time, a proposal had been made that the deadline should be extended for a further year. However, that proposal

had failed to obtain the required majority in the National Assembly. Consequently, the laws which had not been harmonized with the Constitution could be contested by making a request for the Constitutional Court to test the constitutionality of the law.

7. Mrs. ŠELIH (Slovenia) said that the dissemination of the Covenant had taken place in different forms. It should be stressed that the official translation of that instrument had been made available in Slovenia after the ratification of the Covenant by the former Yugoslavia. In 1988, various documents on human rights, including the Covenant, had been published in a collection of essays on human rights.

8. With regard to the educational system, mention should be made of the existence of United Nations clubs in many schools.

9. Non-governmental organizations in Slovenia had played an important role in the field of human rights since the mid-1980s. One of the first had been the Council on Protection of Human Rights and Freedoms, set up between March and June 1988 by the then Socialist Alliance of Working People. In 1990, it had been transformed into a kind of ombudsman's office and in that capacity it was continuing to carry out its mission pending the nomination of an official ombudsman.

10. With regard to the question whether article 5 of the Constitution of Slovenia did not place undue emphasis on the concept of "nation State", she said that that provision had to be assessed in conjunction with articles 1, 2 and 3 of the Constitution, which defined Slovenia very clearly as a democratic State, a State under the rule of law, and a State of citizens. It was no accident that those articles were at the beginning of the Constitution, which sought to stress the importance of the concept of the citizen State. That concept had been given practical expression in the liberal provisions on the acquisition of citizenship by everyone who had permanent residence in Slovenia.

11. In article 5 of the Constitution, the special consideration given to different minorities should be viewed in the light of the general introductory provisions, establishing protection of human rights and fundamental freedoms within the territory of Slovenia as the primary principle. With regard to the special way in which autochthonous Slovenes in neighbouring countries as well as Slovene emigrants and migrant workers were treated, it should be borne in mind that Slovenia had been a country of emigration for an extremely long time and, as a small country, it had a vital interest in maintaining contact with its own people outside Slovenia. The special constitutional provision concerning rights and privileges relating to the acquisition of citizenship and to the recovery of property taken away during recent decades sought to redress some of the grave injustices committed by the previous regime.

12. Mrs. ŠMIT (Slovenia), referring to the independence of the judiciary in Slovenia, said that the new laws on administrative disputes and administrative courts would soon be incorporated in parliamentary procedure. Those laws, particularly the law on administrative disputes, were conceived in such a way as to ensure the judicial protection of all human rights on the basis of full jurisdiction, which the current legislation guaranteed rather as an exception.

13. The novelty in the new law on the Constitutional Court was the possibility for individuals and for the ombudsman to lodge a constitutional complaint alleging the violation of human rights or fundamental freedoms.

14. The most important aspect of the constitutionally guaranteed independence of a judge was the permanence of his tenure.

15. With regard to the question whether an international instrument could be invoked before the courts in Slovenia, she replied in the affirmative and said that the provisions of such an instrument which had been ratified in Slovenia could be invoked and used before the courts.

16. On the institution of the ombudsman, she said that the President had been able to initiate the procedure for selecting candidates only in February 1994 when the new law on the Constitutional Court had been adopted. In view of the fact that the election of the ombudsman had also become in many respects a matter of prestige for the political parties, the President was conducting parliamentary consultations in order to determine whether one of the candidates could be assured of the necessary two-thirds majority for election.

17. As to coordination between the ombudsman and the Council of Human Rights and Fundamental Freedoms, she recalled that article 58 of the law on the ombudsman prescribed that on the day the ombudsman began to perform his functions, the law on the Council of Human Rights and Fundamental Freedoms would cease to apply. However, that did not mean that the Council itself would cease to function, and it would be highly desirable for the furtherance of human rights in Slovenia if the Council assumed the activities of a national institution in that field.

18. Mrs. ŠELIH (Slovenia) said that criminal offences were the most serious infractions and were in principle contained in the Criminal Code. They were always defined by a statute and could only be perpetrated by a natural person. Establishment of guilt was necessary for the imposition of a penalty. Petty offences involved violations of rules of common life and could be defined by statutes and lower legal norms. Perpetrators could be either natural or legal persons. They were dealt with by specialized courts. Economic offences had been introduced into the legal system in the 1950s in order to provide for the protection of social property. In December 1993, the Parliament had decided to abolish that category.

19. Mr. MAHNIČ (Slovenia) said that no state of emergency had been proclaimed in Slovenia during the aggression by the Yugoslav National Army at the end of June 1991. Therefore, no measures derogating from Slovenia's obligations under the Covenant had been taken.

20. With regard to the question of minorities and immigrants, he said that the Constitution referred to autochthonous Italian and Hungarian ethnic communities in Slovenia. Ethnic groups which had traditionally resided in a certain geographical area enjoyed the constitutionally guaranteed special minority rights. The Italian and Hungarian ethnic communities corresponded to those criteria and enjoyed those rights, which were provided for not only in the Constitution but also in some 30 laws and statutes.

21. The Constitution did not apply the term "autochthonous" to the Romany (Gypsy) community but it had also been granted special status. There were about 5,300 Romanies in Slovenia and the law on local self-government had granted them direct representation in the municipal councils, giving them for the first time the right to participate directly in decision-making at the local level.

22. With regard to the German-speaking minority, according to the 1991 census, 199 inhabitants had defined their ethnic group as Austrian and 546 had claimed to be ethnic Germans. Following the independence of Slovenia, an association named "Most" (Bridge) had been established and advocated that the German-speaking ethnic community should be recognized as an autochthonous one. The Government of Austria had made an initiative to discuss the issue at the bilateral level and the Government of Slovenia had therefore established an expert group to study the matter.

23. The distinction between the autochthonous ethnic community and recent immigrant groups (migrant workers and members of their families) was internationally recognized. It was not based only on purely theoretical or historical grounds but also on practical considerations. Whereas protection for the autochthonous ethnic communities was provided in specific geographical areas where they lived, recent migrants were dispersed all over the territory of Slovenia, mostly at or near industrial centres. That distinction was relevant and continued to be made both in practice and in theory even though immigrants might acquire the attributes of autochthonous residents.

24. The distinction meant that the autochthonous ethnic communities were granted special rights in order to preserve their identity, while recent migrants enjoyed general rights. In theory, such distinction was described as the difference between "positive protection" (special rights in addition to the rights guaranteed to all citizens) and "negative protection" (prohibition of discrimination, recognition of the right of members of those groups to use their language, enjoy their culture and practise their religion).

25. With regard to education, he said that the children of immigrants from other former Yugoslav Republics attended Slovene schools in which, in addition to the regular curriculum, provision was made for optional lessons in their mother tongue.

26. The most important rights accorded to the Italian and Hungarian minorities were the result of recent developments, although the majority of their rights had been provided for as early as 1974 when Slovenia had been a federal unit of the former Yugoslavia. If members of the ethnic communities had been the victims of injustice, they were entitled to a remedy as were other citizens of Slovenia. The Italian and Hungarian minorities were organized in self-governing ethnic communities which represented their interests and took part in decision-making concerning all issues related to the position of the ethnic community. At the State level, they were represented in the National Assembly by their deputies, who had been elected on special lists. Members of the Italian and Hungarian ethnic communities therefore participated both in general elections and in the election of their own deputies.

27. Mrs. ŠMIT (Slovenia), replying to questions on equality of women, said that although women's right to abortion had been the most controversial issue in the debate on the Constitution, it had nevertheless been upheld. The law legalizing abortion dated from 1977, and was still in force. It allowed abortion for social as well as medical reasons, provided that the woman's circumstances were such as to justify it. Contraception was provided free of charge at gynaecology clinics: it was less frequently used in Slovenia than in countries of western Europe, but no statistics on the matter were yet available. All schools were co-educational.

28. According to 1992 statistics, women represented 47 per cent of the total workforce, 83 per cent of those employed in the health care and social welfare sectors, and 66 per cent of those employed in education. Seventy per cent of all magistrates in courts of first instance were women: though that might be the result of the fact that women had a special concern for justice, a more likely cause was that the profession was not a very well paid one. In the higher echelons of the judiciary women represented only 25 per cent.

29. More attention was now being paid to the problem of violence against women. Although domestic violence accounted only for some 10 per cent of all crime, it was considered as an important problem. Increased public awareness of the issue was reflected in the setting up of helplines for battered women, and women's refuges were currently being advocated.

30. Mrs. ŠELIH (Slovenia), referring to family life and children's rights, said that the 1989 law on marriage and family relations provided that couples cohabiting outside marriage had the same legal obligations as married couples. In principle, both parents shared equally in obligations towards their children: it was their joint duty to ensure their healthy physical and personal development, and to provide them with an education that would foster their abilities and interests. Should a couple be in dispute over parental authority, responsibility in the matter would be taken over by the Department of Social Welfare. In the case of a separation, parental authority would be assumed by the parent with whom the child was living: likewise, in case of divorce, the parent who had been awarded custody would assume parental authority. It should be noted that the court would only decide on the matter of custody where the couple themselves had failed to agree. The Slovene system did not provide for joint custody.

31. Children were given the family name of one or other parent, unless the parents decided to give them a different family name. If the parents could not reach agreement, the Department of Social Welfare would decide the matter, although provision was made for judicial review after the administrative decree concerned had become binding. She pointed out that the regulations governing the welfare of children in need of special care and protection were currently under review.

32. The concept of children's rights under Slovene legislation differed from that of the Convention on the Rights of the Child in that it was more protective and paternalistic, and legislation in that area too would need to be reviewed. It would be theoretically possible for children who so wished to

set up a journal. There were no restrictions on demonstrations by children under 18 years of age, since it was officially accepted that children as well as adults had the right of peaceful assembly.

33. Mr. MAHNIČ (Slovenia), referring to freedom of conscience, said that hitherto religious teaching had been provided by parents and by the Church, although a special commission on relations between Church and State was currently discussing how the issue should be regulated in the future.

34. The right to conscientious objection was guaranteed under article 46 of the Constitution. Under a law of 1991, conscripts were entitled to choose either unarmed military service or civilian duties as an alternative to normal military service.

35. Mrs. ŠELIH (Slovenia), addressing the question of the right of doctors to refuse to perform abortions, said there was no legislation governing the matter, but the Medical Code of Conduct provided that a doctor who objected to a particular medical intervention had the right to request a substitute to perform it for him.

36. On the question of citizenship, the law on citizenship of 1991 provided that citizens of republics of the former Yugoslavia who had been residing in Slovenia on 23 December 1990 could acquire Slovene citizenship by filing a request with the communal authorities within six months of the law's entry into force. Some 180,000 persons had taken advantage of the law to acquire dual citizenship.

37. Since it had not been possible to provide for means of acquiring citizenship recognized under international law (such as acquisition ex lege), different solutions had had to be found to the problem, taking into account the fact that even within the former Yugoslavia, Slovenia had been a country of immigration. Some 80 per cent of the immigrants who had acquired citizenship in that way were unskilled workers, and the average period of their residence in Slovenia had been eight years. Some 46 per cent had been from Bosnia and Herzegovina, 34 per cent from Croatia, 13 per cent from Serbia and 5 per cent from the former Yugoslav Republic of Macedonia and from Montenegro.

38. Children of up to 18 years of age automatically acquired the citizenship of their parents, though after 14 years of age the consent of the child was required. Under a 1994 amendment to the law on citizenship, a child who had been living in Slovenia since birth could be naturalized at the request of his or her guardian. In the case of mixed marriages, a non-Slovene citizen could acquire citizenship by naturalization if he or she had been married to a Slovene citizen for at least two years and had been living in Slovenia for at least one year.

39. The law on aliens regulated entry, movement, residence and protection for aliens in the territory of Slovenia. It provided that an alien who had left his country of origin and become a stateless person in order to avoid being persecuted for reasons of race, religion, nationality or political opinion was entitled to refugee status. Exceptions to refugee status were in line with the provisions of the Geneva Convention, 1951: thus, refugee status could not

be granted to aliens who had committed crimes against humanity, acts contrary to international law, or acts contrary to the purposes and principles of the United Nations.

40. Seventy-two applications for refugee status had been submitted between 1991 and 1994. The majority of the applicants had been Serb citizens of Albanian nationality from Kosovo, and citizens of Bosnia and Herzegovina, while 11 out of 17 applications in 1994 had been submitted by Iraqi Kurds. Most had entered the country illegally, without valid papers.

41. No refugees had been forcibly returned to a country where their lives could be in danger as a result of their religion, nationality or political views. She pointed out that the relatively small number of applications for refugee status under the terms of the Geneva Convention did not reflect the actual situation in Slovenia. As many as 31,000 persons had recently been granted the status of "temporary refugee". In order to deal with the masses of refugees fleeing war and ethnic cleansing in Croatia and Bosnia and Herzegovina, a draft bill on temporary refugees had been drawn up and was currently before parliament.

42. The only restrictions on the rights of aliens were those provided for under article 12, paragraph 3, and article 13 of the Covenant. Although they did not enjoy the right to vote in parliamentary elections, aliens could vote for and be elected to the governing bodies of enterprises and public institutions. Although they were not entitled to form political organizations, they had the right to establish aliens' associations, to assemble freely, and to participate in public events. They did not have the right to own land, but would be able to acquire property under a bill currently before parliament.

43. It should be noted that Slovene legislation on aliens had been developed under very special circumstances. After independence in 1991, some 220,000 persons who had not originally been citizens of the former Yugoslav Republic of Slovenia had stayed in the country, and of those some 170,000 had now acquired Slovene citizenship. Some 35,000 had remained in the country as aliens, with either permanent or temporary right of residence.

44. The question of the right to a fair trial was addressed by the draft law on criminal procedure, although most existing legislation had been updated in 1990 to bring it into line with the Covenant and other international instruments in that respect. The bill provided that any person deprived of his liberty should have the right to be informed in his mother tongue about the charge against him, to remain silent, to have the services of counsel, and to have his family informed of his detention. Suspects could be held for a maximum of 48 hours, and the draft law required that they should be notified of their rights. All other forms of deprivation of liberty had to be ordered by the judicial authorities.

45. Preventive detention could only be imposed by court order. It was applied if there was reasonable suspicion that a person guilty of a criminal offence was in hiding, or might escape, destroy evidence, influence witnesses,

or repeat the offence. While she agreed that a period of six months was relatively long, it was generally deemed in accordance with the principle of presumption of innocence.

46. Although the law permitted detention of juveniles together with adults, in practice that occurred only very rarely. On average, only eight juveniles per year had been detained over the past five years.

47. Police were entitled to enter dwellings without a court order only for the purpose of preventing criminal offences, offences against persons and property, or suicides, in cases of danger of flood or fire, or investigating cases of deaths or missing persons. Wire-tapping could only be authorized where criminal offences were involved, and for a period of one month: the period could not be extended for more than six months. The law provided that courts could not base their decisions on evidence acquired by violating human rights and freedoms guaranteed under the Constitution, or by infringing provisions of the law. In addition, unauthorized entry to dwellings and unauthorized wire-tapping were criminal offences.

48. All persons suspected of having committed a criminal offence had the right to choice of counsel, and counsel was provided ex officio for minors, the deaf or others unable to defend themselves. Those not in a position to pay had the costs of counsel paid by the State.

49. On the treatment of offenders, she said that Slovenia's overall detention rate (preventive and punitive) of 30 persons per 100,000 inhabitants had, for the past four or five years and for reasons which she could not personally explain, been one of the lowest in Europe. The principal penal institutions were generally operating well within their capacity. Sentences of up to six months were served in regional prisons, which also housed - in separate quarters - persons in preventive custody. Some convicted prisoners were held close to their homes; in certain areas, for example in Ljubljana, they went out to work during the day, returning to prison for the night.

50. Living standards in penal institutions were adequate. Convicted prisoners had the right to correspondence, to receive visits, to exits at weekends and holidays outside the prison, and to religious services. They were also allowed to wear their own clothes.

51. Solitary confinement was limited to 30 days.

52. Rehabilitative training was available on an optional basis; work was not compulsory. Since the mid-1970s, any educational, medical, psychological or similar measures which might constitute an invasion of the inmate's personality had been subject to the consent of the person concerned.

53. Some difficulties arose from the fact that appeals against administrative decisions in prison were currently dealt with by higher authority, i.e. the Ministry of Justice. Proposals for the transfer of such appeals to the courts, in order to ensure proper judicial protection, were being considered.

54. Torture was prohibited and a criminal offence.

55. Mrs. ŠMIT (Slovenia) said that the freedom of the media was covered by newly adopted laws on the mass media and on the national radio and television service (RTV); she spelt out its basic principles of those laws in detail. Government bodies, local self-government bodies or other public authorities, as well as individuals in public office, public institutions and public enterprises constituting sources of information were legally bound to ensure the accuracy, totality and truth of such information. Journalists could only be denied access to information lawfully determined to be confidential. The law on media stipulated in particular the conditions of exercise of the right to correction and the right of reply; lawsuits could be filed with the competent court against editors-in-chief.

56. The plurality and diversity of radio and television were guaranteed in Slovenia by a 25-member governing body, which was closed to the leaders of political parties, as well as to present or past employees of the RTV.

57. Slovenia's radio and television service comprised two national television programmes, three national radio programmes, one radio and television programme for each national minority, and radio and television programmes for Slovene minorities in neighbouring and other foreign countries. The broadcasting of religious or political propaganda was not permitted. There were also four private television stations and several private radio stations in Slovenia.

58. There was no provision for censorship in the legislation of Slovenia and there had been no reports of censorship in recent years. The existence or otherwise of self-censorship, as referred to by a member of the Committee, was difficult to establish.

59. The right of peaceful assembly was defined in article 42 of the Constitution and regulated by the law on public gatherings, which dated from 1973 and was not altogether compatible with the Constitution and the Covenant. In consequence, the Home Affairs Department, which was empowered to grant requests to assemble in public, ignored the incompatible provisions of that law and took its decisions on the basis of the Constitution and article 21 of the Covenant. A new law on the subject was currently going through Parliament. During the past three years all requests for permission to organize public gatherings had been approved.

60. With 12,830 registered associations as of December 1993, Slovenia was one of the leading European countries in terms of the number of associations in relation to the size of population. The law on associations was also obsolete and incompatible with the provisions of the Constitution and the Covenant; the competent governmental body referred directly to the provisions of those two instruments. A new law on associations, founded on the principles of freedom, independence, non-profit-making and public transparency, was also going through the parliamentary process; but priority had been given by the legislature to ratification of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations.

61. In accordance with article 76 of the Constitution, the establishment and activity of trade unions and membership of them were unrestricted. Article 77 defined the right to strike. The Constitution provided for restriction of

that right on grounds of public interest, i.e. on the basis of criteria that included the nature of the public function. Thus, the right to strike of members of the armed forces and the police was limited by the laws on the police and on defence, but in a manner that was not incompatible with article 22 of the Covenant. The same laws placed restrictions on the membership of policemen and soldiers in political parties.

62. Mrs. ŠELIH (Slovenia), taking up her colleague's final point, said that the constitutional restrictions on membership of political parties by members of the police and armed forces no doubt reflected the fact that those State institutions had, in the past, lacked neutrality and had indeed enjoyed special political power.

63. Concerning the freedom of the media, she stressed that the governing body of the RTV was deliberately composed of representatives of different institutions in civil society in order to preclude all possibility of political domination.

64. Concluding the replies of the delegation of Slovenia to the questions by members of the Committee, she handed the Chairman copies of the annual report on the activities of the Council for the protection of human rights in Slovenia, and of the law on the Human Rights Ombudsman. Her delegation had welcomed the opportunity of presenting its views in detailed fashion.

65. The CHAIRMAN thanked the delegation of Slovenia for its comprehensive replies, and invited members of the Committee to make their concluding observations.

66. Mr. POCAR welcomed the auspicious beginnings of the dialogue, which had been most informative on a large number of topics. Obviously, the harmonization of Slovenia's laws with the provisions of the Covenant was not yet complete, but that was only natural in such a young Republic.

67. He had two concluding observations of substance. Firstly, the legal issues related to the processes of continuity, transition and succession from the previous regime seemed to have been correctly addressed as far as obligations under the Covenant were concerned. It had been encouraging to learn that individuals would be entitled to remedies for violations of human rights committed by the previous Government, and that laws to that effect were under discussion. The treatment of minorities had been specifically mentioned in that regard; but he trusted that the announced measure would be fully comprehensive.

68. Secondly, while it was now clear to him that the Covenant could be invoked directly before the courts in Slovenia and that it prevailed over domestic law, the relationship between the Covenant and the Constitution remained somewhat obscure. It was his understanding that any conflict between an international treaty and the Constitution should be resolved by the Constitutional Court prior to ratification of the instrument in question. But that was obviously impossible as far as the Covenant was concerned, Slovenia being in that respect a successor State. How, then, would conflicts arising after ratification be resolved? He further inquired as to whether, for the purposes of testing the constitutionality of laws and regulations,

the Covenant might play a role. Was the Constitutional Court able to verify the compatibility of laws and regulations with the Covenant, and could it consider complaints about violations of human rights through individual acts contrary to the Covenant? Was the Covenant placed on the same level as the Constitution, as might be inferred from article 153 of the latter, or was it at another level in the system? It was his own impression that the answers to those questions might not for the moment be altogether clear and that the Constitutional Court of Slovenia might be called upon to give a ruling. Like other members of the Committee, he hoped that in such a ruling, the Covenant would be accorded the place they believed it to deserve.

69. Mr. SADI said that the dialogue had made a commendably candid and constructive start.

70. The harmonization of national laws with the Constitution was obviously a matter of crucial importance, and had been addressed admirably. But could that exercise not be carried out with the Covenant in mind as well?

71. He noted that there seemed to be "major" and "minor" minority groups in Slovenia, with the former being accorded special treatment and the latter enjoying general protection. That state of affairs was hard to reconcile with the Covenant, and he hoped that it would be reviewed. Despite his question on the subject, he had not been enlightened as to whether Muslims in Slovenia were treated as a religious or as an ethnic minority; he hoped that the former was the case.

72. Lastly, he now understood that the Covenant formed part of Slovenia's national law and that it could be invoked before the courts; but had that in fact ever happened? It would be useful and informative to learn of a test case in that respect.

73. Mr. WENNERGREN said he had been impressed by the excellent answers to members' questions; the discussion had been fruitful. If attention had been focused mainly on the legal framework - and on the important transformations taking place therein - that was only natural when an initial report was being considered. Slovenia was obviously building up a fine human rights record; it was to be hoped that all legislative projects that remained to be completed would be carried through in the same spirit and as expeditiously.

74. He had discerned in the discussion on the rights of the child what he called a "philosophical complication" for Slovenia, a country where the prevailing presumption was that of the child as an object, whereas the Covenant itself and the relevant Convention established the child as a real subject in the matter of rights. He hoped that Slovenia's position in that respect would be reviewed.

75. The wording of article 46 of the Constitution, ("Conscientious objection is allowed in cases which are determined by law ...") might imply that if the law was silent, there was no basis for such objection. Steps should perhaps be taken to extend the protection of the law to all instances where conscientious objection was found.

76. He had learned with satisfaction of the creation of a very comprehensive system of administrative justice, and looked forward to an account of its functioning in the next periodic report.

77. Mrs. EVATT said that the dialogue and the supplementary information provided by the delegation of Slovenia had compensated in great measure for the rather disappointingly slim initial report. It was clear that there was a very strong awareness in Slovenia of the need for appropriate laws and for the progressive enjoyment of human rights. Harmonization was well in hand; and new laws, such as that on the Ombudsman, were of particular interest to the Committee.

78. As pointed out, Slovenia had a particularly low rate of detention in prisons, as well as a high proportion of women judges; she suggested that there might be a correlation between those two phenomena. She was generally satisfied by the information provided on the rights of women and children and on questions of equality in marriage.

79. Some questions remained in her mind, however, with regard to minorities in Slovenia, a country which had been coping admirably with a very large influx of refugees and other migrants. She drew the delegation's attention to the importance of articles 25 and 26 of the Covenant, as well as article 27, in that connection, stressing that any exceptions to equality of treatment must be justified on proper grounds.

80. On the subject of religious education, she commended to the delegation's consideration the Committee's general comment on article 18 of the Covenant.

81. Noting that new laws on refugees and aliens were being brought forward in Slovenia, she underlined the importance of ensuring that they were fully in compliance with the Covenant, and that they embodied no unreasonable discrimination.

82. To conclude, she hoped to learn more in the next report about the progressive enjoyment of human rights and about the changes and developments currently under way. What the Committee sought above all was an explanation of the manner in which the rights enshrined in the Covenant were actually enjoyed, by reference to decisions of courts or of government agencies or to the implementation in practice of the laws about which so much had been said.

83. Mr. BRUNI CELLI remarked that the delegation of Slovenia had responded to almost all the concerns voiced by members of the Committee and that other speakers had already made many of what would have been his own general observations. He agreed that the dialogue had commenced in satisfactory fashion, and hoped that it marked the beginning of close cooperation between the Committee and the State party.

84. One of his major preoccupations had, however, not yet been set to rest - namely the question of minorities in Slovenia and more especially of their political representation. Referring to the core document (HRI/CORE/1/Add.35), he asked how it could be that some 8,000 Hungarians and some 3,000 Italians had delegates in the National Assembly while - if his conversion of the percentage figures was accurate - some 54,000 Croats and some 48,000 Serbs did

not. And how could it be that some 36,000 Muslims in Slovenia (the figure given in response to a question by Mr. Dimitrijevic) were not represented either? Surely that suggested some incompatibility with article 25, and no doubt with other articles of the Covenant relating to equality of treatment. He invited the State party to consider the Committee's very extensive general comment on article 27. He looked forward to receiving further information on those matters in due course.

85. Mr. LALLAH observed that the delegation of Slovenia had responded competently and systematically to a great number of questions. If, as had been said, the report and replies were somewhat short on examples of the law and human rights in practice, that was understandable: Slovenia had submitted its initial report at a time of historical change and admirably intense legislative activity designed to harmonize domestic law with the Constitution and with the provisions of international instruments. What should be noted, moreover, was that an internal mechanism was in place to test human rights standards and their application, not only in regard to ordinary laws but also with respect to any conflict between the Constitution and international norms.

86. If he had, in his earlier statement, remarked on an apparent Eurocentrism, his concerns in that regard had now been fully allayed.

87. A great deal of time had been spent on the question of article 27 of the Covenant and the special situation in Slovenia, which was of concern to many members of the Committee. He invited the delegation to consider article 27 not in isolation, but in conjunction with articles 2, 3, 25 and 26. He submitted that whenever the State decided to accord special treatment, it should proceed with caution; it might be useful to consult the Committee's jurisprudence in the matter: where a right that was not guaranteed by the Covenant was nevertheless provided for by legislation, then it was the duty of the State to ensure that by its legislative and administrative behaviour it did not provide unequal treatment or advantages. That being said, some differences of treatment might be perfectly acceptable, and justified by reasonable criteria.

88. He had also been interested by the delegation's remarks regarding religious education. The State must ensure equal treatment and opportunities for persons of all different religions as well as respect for those who professed no particular religious beliefs.

89. As to the question of equality between men and women, Mrs. Evatt had drawn attention to the high number of women judges in the country. Since women generally provided the second income in a family, he wondered whether the salaries of judges in Slovenia were particularly low. That was important since one aspect of the security of tenure of judges was their appropriate and guaranteed remuneration. Lastly, he did not share the concerns voiced regarding restrictions on the rights of the military and the police in Slovenia. Its legislation in that regard seemed to be in keeping with article 22, paragraph 2, and article 25 of the Covenant.

90. Mr. AGUILAR URBINA thanked the delegation of Slovenia for the additional information required to complement its very brief report. More information could have been provided, however, on the status of women in the country.

While he welcomed the fact that women were well represented on the delegation and constituted 47 per cent of the workforce, it was clear that they remained in traditionally female professions that were not particularly well paid: for instance the salaries of magistrates and teachers in Slovenia were among the lowest in the world. The same applied to the many women judges in the country, which gave rise to concerns regarding the proper functioning of the courts in general. Moreover, in the past, members of the magistrature in eastern European countries had generally not been held in high esteem; perhaps there was still some stigma attached to the profession - a vestige of the former regime. Little information had been given on the role women played in politics and how many had been elected to political office.

91. He was particularly concerned, however, by the delegation's remarks to the effect that special rights were accorded to certain minorities for practical reasons. Surely it would be better to grant equal treatment to all the minority groups, including the smaller ones not specifically referred to in the Constitution. There seemed to be some reluctance on the part of the State to recognize the rights of such minorities, especially those from the Republics of the former Yugoslavia. In that connection, he associated himself with the remarks made by Mr. Dimitrijevic and Mr. Bruni Celli.

92. Mr. BAN said that the detailed replies given by the delegation of Slovenia had made for a better understanding of the overall situation in the country and reflected the Government's firm commitment to the cause of human rights. However, three main areas of concern remained. First, he was not entirely satisfied with the clarifications provided regarding the status of the Covenant, which implied a possible conflict between the Constitution of Slovenia and its international treaty obligations. Second, every effort must be made to speed up the process of ratifying bills and enacting new legislation given the number of obsolete laws that were in flagrant contradiction with the provisions of the Covenant, including the legislation on mandatory arrest. He shared the concern expressed by Mr. Lallah and others regarding certain distinctions in Slovene legislation that could lead to discrimination. He therefore recommended a thorough analysis by the Slovene delegation not only of the Covenant but also of the Committee's general comments on specific articles as well as its jurisprudence under the Optional Protocol so as to ensure the correct interpretation and application of its provisions in future. He hoped that Slovenia's second periodic report would contain more detailed information on the practical implementation of the Covenant and the remedies available to persons whose rights were violated.

93. Mr. PRADO VALLEJO said that the constructive dialogue held with the Slovene delegation had highlighted the great efforts made by the country to move swiftly towards democracy with broad-ranging legislative reforms and due respect for human rights. The initial report was none the less unduly succinct and he would welcome more detailed information on the practical implementation of the new legislation in the country's second periodic report. While he was satisfied with the clarifications provided regarding the status of the Covenant, which took precedence over domestic law, steps should be taken to create greater awareness among the population of the rights it enshrined. He was particularly concerned by the legislation that enabled the internal affairs authorities to detain citizens without a warrant for their arrest. Any individual deprived of his liberty must be guaranteed due

protection and brought before the appropriate judicial authorities. Although paragraph 25 of the report indicated that the provisions concerned were no longer applied in practice, in order to avoid such situations occurring in future, he recommended that the law should be repealed. A further cause of concern was the fact that under current legislation the period of preventive detention could be extended beyond the six-month time-limit once the judicial proceedings were under way. That seemed to be at variance with the principle of presumption of innocence. Moreover, the legislation that allowed for the detention of juveniles in the same quarters as adults must also be amended to bring it into line with the provisions of article 10, paragraph 2 of the Covenant. Lastly, the scope of current legislation relating to economic offences was too broad and must be redefined, and more remedies should be made available to persons charged with such offences.

94. Mr. DIMITRIJEVIC said that the overall picture of Slovenia that had emerged from the dialogue with the delegation was of a country that, despite its difficulties, afforded citizens adequate protection of basic human rights. His main concern, which probably neither the delegation nor the Government could address, was the nationalist bias in the Constitution, a phenomenon apparent in many former communist countries. Although less marked in the case of Slovenia, there was a clear differentiation in the Slovene Constitution between persons of the predominant nationality and other ethnic groups. The delegation's reply to concerns voiced in that connection was that article 5 of the Constitution must be read in conjunction with articles 1, 2 and 3. If, according to article 3, Slovenia was indeed a State of all its citizens, then why did it protect only autochthonous Slovene ethnic minorities in neighbouring States, Slovene emigrants and migrant workers (art. 5) instead of all its nationals residing abroad? Article 5 also stipulated that Slovenes without Slovene citizenship enjoyed special rights and benefits; moreover, from article 13 he deduced that persons other than Slovenes could not exercise full political rights. In response to queries on the new nationality law, the delegation had indicated that Slovenes who had immigrated three generations previously had certain privileges regarding the acquisition of Slovene nationality. What of ethnic Germans or Hungarians, not to mention Muslims and Croats, who might have left Slovenia at that time for economic or political reasons? It was very difficult to determine who exactly were members of the autochthonous Slovene ethnic minority without entering into dangerous waters such as blood testing and eugenics. A person born in the 1900s under the Austro-Hungarian Empire was not a Slovene in any legal sense. So how could the ethnic group of his descendants be determined? In his view, the nationalist bias in the Constitution and legislation might be tantamount to incipient discrimination.

95. He associated himself with the concerns expressed regarding the situation of minorities and cited from paragraph 5.2 of the Committee's general comment on article 27 of the Covenant in that connection. The information provided in the report in connection with article 27 implied that Slovenia did not recognize any minority groups other than autochthonous minorities - a distinction which was not drawn in the Covenant. Furthermore, the additional clarifications provided by the delegation suggested that the settlement of new minorities could be attributed to political developments. He was more inclined to believe that such communities had moved to the country for

economic reasons. He was confident that every effort would be made in Slovenia to eliminate such forms of discrimination; in the meantime, however, such aspects gave rise to grave concern.

96. Mr. EL SHAFEI said that, despite the laudable efforts made by Slovenia in the few years since its independence to base national legislation on constitutional principles and bring it into line with international treaty obligations, many laws in force were incompatible with the Covenant. Given the delays in the ratification of certain draft laws, particularly those relating to trade unions and the right of assembly, he expressed surprise that more complaints had not been addressed to the Constitutional Court. He hoped that the Slovene delegation would convey the Committee's concerns regarding such matters to the competent authorities.

97. His initial misgivings regarding article 5 of the Constitution had not been dispelled by the delegation's subsequent remarks to the effect that there had been grave violations against Slovenes under the former regime which the new State felt obliged to redress. He expressed concern regarding the provision in that article which read: "It looks after the autochthonous Slovene ethnic minorities in neighbouring States, Slovene emigrants and migrant workers, ..."; for it might be understood as applying to autochthonous Slovenes worldwide or to members of autonomous minorities within the territory of other States. He wondered exactly how the State intended to protect the rights of those persons, pointing to the practical difficulties involved, not to mention the implications for international relations. Furthermore, he shared the concern expressed by Mr. Pocar regarding possible discrepancies between the Covenant and the Constitution. He understood, however, that such problems stemmed from the recent independence of the State and expressed the hope that they would be resolved in the near future. He endorsed members' comments regarding the apparent discrimination in the Slovene legislation against certain minority groups. As to the large number of temporary refugees in the country, apart from addressing their practical problems, the State might wish to look into the possibility of granting them certain rights in the longer term.

98. Mr. FRANCIS thanked the delegation for the additional clarifications provided. On the basis of the relevant articles of the Constitution, he was satisfied that international treaties took precedence over domestic laws in Slovenia. He welcomed the fact that Slovenia had not delayed in ratifying many human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women. Beside the efforts made to harmonize domestic law with the Constitution, significant progress had been made in the matter of legislative reform and he welcomed new legislation relating inter alia to the Bar, the Constitutional Court, an ombudsman and administrative tribunals. He hoped that Slovenia's second periodic report would contain more detailed information on the practical implementation of those new laws.

99. The CHAIRMAN thanked the Slovene delegation for doing its utmost to reply to all the questions raised. It was only natural that the members of the Committee should still have some concerns, for there was no "human rights paradise" although Slovenia was clearly determined to strive towards that goal. He recalled that the purpose of the dialogue was not to challenge or

criticize States parties but, rather, to seek appropriate solutions to their problems. He stressed the importance of sustaining the dialogue with the delegation and expressed confidence that Slovenia's second periodic report would reflect further progress and new developments in the sphere of human rights.

100. Mrs. ŠELIH (Slovenia) said that as head of the delegation and a professor of law, she had enjoyed the immensely constructive dialogue with the members of the Committee. She was particularly appreciative of their understanding regarding the initial report submitted, which had been prepared under pressure owing to the particular difficulties encountered during that period in Slovenia's history. The delegation had done its best to reply to all the Committee's questions in the short time available. She realized that the Committee would have welcomed more information on the practical implementation of legislation. However, as a first step it had been considered important to explain in detail the legal framework in the country. She looked forward to pursuing the dialogue with the Committee in future.

101. The CHAIRMAN said that Slovenia's second periodic report would fall due on 24 June 1997.

The meeting rose at 1.05 p.m.